MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2020/2021

UCL3622 – COMPANY LAW II

(All Sections / Groups)

13 MARCH 2021
Reading Time: 9.15 a.m. – 9.30 a.m.
(15 Minutes)
Answering Time: 9.30 a.m. – 12.30 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This question paper consists of 4 pages with 5 questions only.

3. Answer **ALL** questions in **PART A** and **TWO (2)** questions only in **PART B**. Attempt **FOUR** out of FIVE questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of the following statute into the exam venue:

   i) Companies Act 2016

   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

Answer ALL questions from Part A and TWO (2) questions ONLY from Part B.

PART A (50 MARKS): ANSWER ALL QUESTIONS

QUESTION 1

Discuss the suitable application to the concept of financial assistance based on the Companies Act 2016 for situation as follows:

(i) Micro Berhad ("MB") holds 75% of the shares issued by Soft Berhad ("SB"). Consequently, SB is the subsidiary of MB. Ever since its incorporation, MB's shares has been listed within the Bursa Malaysia. Lisa, a director of SB heard that En. Ali was interested to purchase shares of MB. However, En. Ali could not afford to purchase the shares. Lisa then provided a loan amounting RM50,000 out of the capital fund of SB for the purchase of shares in MB.

(10 marks)

(ii) Wolfson Bhd. ("WB") is a company whose shares are not quoted on a stock exchange. WB wishes to provide financial assistance to one Mr. Hamid for the purpose of the acquisition of a share in WB. WB was informed that it is viable but somehow there are strict procedures that need to be complied with.

(15 marks)

(Total: 25 marks)

QUESTION 2

Despite the financial relief provided by the Government, COVID-19 outbreak and the Movement Control Order (MCO) have severely impacted Malaysian businesses. SamSan Tech Sdn. Bhd. ("SamSan Tech"), a small and medium enterprise (SME) is one of them and has been falling behind their financial commitments. Nam Do-San, the founder of SamSan Tech seeks your advice. He would like to know what are his options to rescue SamSan Tech from financial distress and what are the most cost and time effective method to do so.

Advise him.

(Total:25 marks)

Continued…

PART B (50 MARKS): ANSWER ANY TWO (2) QUESTIONS ONLY

QUESTION 3

KGL Sdn. Bhd. (the "Company") is a private limited company which carries on a business of manufacturing furniture and fixtures. The shareholders consist of Amar, Ben, and Chan who holds 60%, 30% and 10% of the Company's issued share capital respectively. At the same time, Amar is the managing director of the Company.

In December 2020, the Company decided to build an additional factory to cope with the demand in production and Amar was given the authority and responsibility by the Company to identify a suitable piece of land for such purpose. After conducting a survey of possible locations, Amar proposed for the Company to enter into a sale and purchase agreement with one Mr. Henry for a piece of land in Setapak valued at RM2.5 million. The proposal was approved in a members' meeting. A sale and purchase agreement was entered into between the Company and Mr. Henry despite the disagreements by the other two members, Ben and Chan.

Ben found out that the land was valued at an inflated price whereas the normal price of such land is actually valued at RM1 million. Subsequently, he also found out that Amar has been receiving 10% commission out of the sale of the land from Mr. Henry which arrangement was agreed during the negotiation of the contract.

In January 2021, both Ben and Chan were made known that Amar had diverted away the business of the Company to another company by the name, Suria Sdn. Bhd. ("SSB") which he and Mr. Henry had set up. To date, Amar has also been using KGL's fund to pay for his personal expenses and failed to recommend an appropriate dividend despite the fact that the company has consistently made substantial profits.

Ben and Chan wish to know whether they can institute an action on behalf of the Company to seek for the relevant remedies in the event the Company itself does not do so.

Advise Ben and Chan.

(Total: 25 marks)

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QUESTION 4

Maju Bakti Bhd. ("MBH") is a company carrying on a business of supplying steel water pipes. MBH has an issued and paid up capital of RM100,000.00, made up of 70,000 ordinary shares and 30,000 preference shares. Its shareholding structure comprising two classes is as follows:

Class A (ordinary shares)	Class B (preference shares)
Kate (30,000)	Rob (15,000)
Sarah (40,000)	Jim (15,000)

The company's constitution stated the preference shareholders' rights as follows:

"The *"B" class shares are entitled to 10% dividends per annum in priority to other classes of shares; and The "B" class shares carry with them the rights to share in surplus assets upon winding up equally with ordinary shares".*

MBH plans to raise additional capital by the following transactions:

(i) To issue 10,000 new preference shares with the same rights as existing preference shares.
(ii) To cancel the preference shareholders' right to share in surplus assets upon winding up equally with the ordinary shareholders.
(iii) To introduce a provision in the constitution: "Any variation of class rights must be voted on a separate class meeting of preference shareholders and the variation must be approved by an ordinary resolution of members of that class".

MBH is of the view that the proposals can be effected without the approval of the preference shareholders. Rob and Jim disagree with MBH's view.

Advise on the following:

(a) MBH; as to the legal requirements that need to be complied with to carry out the above proposals in view of MBH's constitution provides no such provision for the variation of class rights;

(18 marks)

(b) Rob and Jim; on their rights to challenge the proposals, if effected.

(7 marks)

(Total: 25 marks)

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QUESTION 5

On 21 January 2019, Injae Company Sdn. Bhd. ("Injae Co.") executed a debenture creating a charge over "all its assets and rights of Injae Co. both present and future including but not limited to the stocks in trade of Injae Co. which is or may be from time to time while the debenture is in force comprised in the property and undertaking of Injae Co." in favour of SH Venture Capital Bhd. ("SHV Cap"). The debenture contained, amongst others, the following clauses:

(i) Injae Co. shall not create any other mortgage, charge, debenture, or other encumbrances having priority to or ranking *pari passu* with this debenture unless with SHV Cap's written consent.
(ii) The charge shall "immediately attach and become affixed" if Injae Co. charges or attempts to charge or encumber any of its property or assets without the prior written consent of SHV Cap.
(iii) Injae Co. cannot sell or otherwise dispose of the asset or any other dealings with the assets except with prior permission of SHV Cap.

When SHV Cap was about to register the debenture with the Companies Commission of Malaysia (SSM), they found out that, in December 2018, Injae Co. has secured RM500,000 export finance facility from 2STO Bank Bhd. and as security for the facility, a fixed charge on a land with the address of KKM12, Leather Lane, Muar Johor was created in favour of 2STO Bank Bhd. The charge was registered with the land office. However, no record of registration of the charge was found at SSM.

Sometime in March 2019, SHV Cap further found out that there was a charge created on 4 March 2018 over all of Injae Co.'s assets both present and future in favour of Chancery Bank Bhd. The debenture contained a clause which provides that the charge shall immediately attach and become fixed if Injae Co. charges or attempts to charge or encumber any of its property or assets without the prior written consent of Chancery Bank Bhd. However, Injae Co. argued that they plan to file a 'Registration of Satisfaction and Release of Charges' under section 360 of the Companies Act 2016 with the Registrar of Companies.

Advise the relevant parties on the validity and priority of the charges.

(Total: 25 marks)

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